

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CRAIG SENN)	
Claimant)	
VS.)	
)	Docket No. 1,000,358
PIONEER BALLOON COMPANY)	
Respondent)	
AND)	
)	
WAUSAU UNDERWRITERS INSURANCE CO.)	
Insurance Carrier)	

ORDER

Both claimant and respondent appealed the April 24, 2003 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on October 17, 2003, in Wichita, Kansas.

APPEARANCES

Roger A. Riedmiller of Wichita, Kansas, appeared for claimant. Christopher J. McCurdy of Overland Park, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for bilateral upper extremity injuries that allegedly occurred due to the repetitive use of the upper extremities during claimant's employment with respondent through May 24, 2001. In the April 24, 2003 Award, the Judge determined that despite surgery to both upper extremities and despite permanent impairment to both upper extremities claimant had no permanent work restrictions or limitations. Therefore, the Judge awarded claimant a three percent permanent partial general disability, which was based upon the whole body functional impairment rating provided by Dr. Robert Eyster.

Claimant contends Judge Frobish erred. Claimant argues that he has sustained a nine percent task loss and a 91.4 percent wage loss for a 50.2 percent permanent partial general disability. Accordingly, claimant requests the Board to increase the award.

Conversely, respondent and its insurance carrier contend the Board should deny claimant's request for benefits. They argue claimant has failed to prove that his work activities caused his bilateral upper extremity injuries and claimant has failed to prove he provided respondent with timely notice of the alleged accident.

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment?
2. If so, did claimant provide respondent with timely notice of accident?
3. If so, what is the nature and extent of claimant's injuries and disability?

FINDINGS OF FACT

After reviewing the entire record and after considering the parties' arguments, the Board finds, as follows:

1. Claimant, who has a bachelor's degree in graphic arts, began working for respondent in 1987. For approximately two years, claimant was respondent's creative services manager. From 1989 to 1992, claimant was respondent's national sales manager. And from 1992 to 2001, claimant was respondent's marketing development manager. Due to a restructuring, respondent terminated claimant on May 24, 2001.
2. As the marketing development manager, claimant was responsible for respondent's Qualtex Balloon Network Program, which is a worldwide network of approximately 4,500 balloon professionals who use balloons in their businesses. Claimant was also responsible for coordinating the International Balloon Arts Convention.
3. In approximately January 2000, claimant noticed numbness and tingling in his hands and fingers while working at his desk. According to claimant, when his symptoms began he would feel a tingling sensation after using his computer keyboard, also when driving and in the evenings. Claimant used his computer to type weekly reports, write articles and send electronic mail. Claimant estimated that his final typed work product comprised approximately 35 pages per month. Although claimant estimated that he spent one-half of his day using his computer,

a substantial portion of that time was spent thinking about what he would type. According to claimant, he was a slow typist who took a lot of breaks while typing as he often paused to think and conceptualize between sentences.

4. In July 2000, claimant saw his family physician, Dr. Joe D. Davison, for reasons other than his upper extremity symptoms. But at that appointment, claimant mentioned his upper extremity symptoms and the doctor prescribed wrist splints. According to claimant, Dr. Davison thought claimant may have been bending his wrists while sleeping.
5. Despite the wrist splints, which claimant faithfully wore at night, claimant's symptoms did not improve. In early 2001, claimant believed his symptoms were worsening. When claimant saw Dr. Davison in April 2001 for other medical reasons, claimant advised the doctor that the wrist splints had not affected the numbness and tingling in his hands and fingers. Accordingly, the doctor recommended nerve conduction tests, from which claimant learned in early May 2001 that he had bilateral carpal tunnel syndrome. At this point in time, neither Dr. Davison nor the doctor who administered the nerve conduction tests advised claimant that the carpal tunnel syndrome was caused by his work activities.
6. In April 2001, before claimant underwent the nerve conduction studies, claimant requested a workstation analysis. According to Rodney Lowe, respondent's service strategy director who conducted the ergonomic study, at the time of the April 2001 study claimant complained of tingling in his right wrist. As a result of the workstation analysis, Mr. Lowe determined that claimant's keyboard was out of position as it was flat on his desk. Mr. Lowe testified, in part:

There were several findings. One of the things was that he had his monitor facing him to the back window so he was getting a lot of glare. He had his keyboard, which was a standard keyboard, a flat keyboard, on top of his desk and he was typing on that. And his posture wasn't very good as to how he was set up for both of those.

So we made the decision we needed to, first off, get his angle from his shoulder to his elbow to his hands greater than 90 degrees to alleviate problems with any tendon pinching that would occur. Also improve blood flow get the keyboard down in his lap. So we bought a keyboard mouse tray and static mouse to keep him from having to move his shoulder, arm and wrist and click with a

different finger instead of just the forefinger. He was complaining of right wrist tingling.¹

Claimant advised Mr. Lowe that he did minimal typing. Nonetheless, Mr. Lowe, who estimated that claimant spent no more than 10 percent of his time typing, provided claimant a special keyboard designed for those who performed substantial typing. According to claimant, despite these changes to his workstation his symptoms progressively worsened.

7. In May 2001, when claimant learned he had bilateral carpal tunnel syndrome, he advised Mr. Lowe. But claimant did not tell Mr. Lowe that the carpal tunnel syndrome was work-related as no doctor had advised him of that relationship as of that point in time.
8. Claimant continued to work for respondent through May 24, 2001. On that date Mr. Lowe met with claimant to discuss his separation package. During their meeting, claimant asked Mr. Lowe what respondent was going to do about his wrist problem. Claimant advised Mr. Lowe that he needed medical treatment and also asked Mr. Lowe what was involved in filing a workers compensation claim. Mr. Lowe asked claimant if he wanted to file a workers compensation claim and claimant responded that he would think about it.
9. In June 2001, claimant saw another doctor for his upper extremity symptoms. According to claimant, it was only after that visit that he understood his upper extremity problems may have been related to using a computer at work.
10. Eventually claimant came under the treatment of orthopedic surgeon Dr. Robert Eyster. The doctor first saw claimant in February 2002 and in March 2002 performed bilateral carpal tunnel releases.
11. Two physicians testified in this claim and provided their opinions regarding whether claimant's work caused or contributed to his carpal tunnel syndrome. After given a more detailed description of claimant's work, Dr. Eyster concluded it was unlikely that claimant's work caused or contributed to his carpal tunnel syndrome. On the other hand, Dr. Pedro Murati, who was initially told that claimant worked on a computer and used a telephone eight to nine hours per day, concluded that claimant's work activities caused his carpal tunnel syndrome.

¹ P.H. Trans. (Jan. 17, 2002) at 49.

CONCLUSIONS OF LAW

The Board concludes that claimant has failed to prove his work activities more probably than not caused or contributed to his bilateral carpal tunnel syndrome. Accordingly, claimant's request for benefits should be denied. The evidence establishes that claimant, while working for respondent, did minimal typing and minimal repetitive activities with his hands and upper extremities. Moreover, Dr. Eyster, who is seemingly the more unbiased expert witness as he was appointed by the Judge to treat claimant, concluded that it was unlikely that claimant's work activities caused or contributed to his carpal tunnel syndrome.

Based upon the above, the remaining issues are rendered moot.

The April 24, 2003 Award should be reversed.

AWARD

WHEREFORE, the Board reverses the April 24, 2003 Award and denies claimant's request for benefits.

Respondent and its insurance carrier are responsible for the administrative costs of this claim as set forth in the Award.

IT IS SO ORDERED.

Dated this ____ day of November 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director